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No. 98-229

In The

Supreme Court of the United States

October Term, 1997

FUTURA DEVELOPMENT OF PUERTO RICO, INC.,

Petitioner,

v.

ESTADO LIBRE ASOCIADO DE PUERTO RICO, THE COOPERATIVE DEVELOPMENT ADMINISTRATION, THE COOPERATIVE DEVELOPMENT COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether this Court should reconsider the rule of *Peacock v. Thomas*, 516 U.S. 349 (1996), that a federal court lacks ancillary jurisdiction to enforce a prior judgment against a third party on an *alter ego* theory when there is no independent basis for jurisdiction over the claims against said party.

II. Whether this Court should decide whether the Commonwealth of Puerto Rico is entitled to Eleventh Amendment Immunity in a case in which this question is not necessary to the decision.

LIST PURSUANT TO RULE 14(1)(b) AND RULE 29.6

The Petition accurately lists the parties to the proceedings.

Respondent the Commonwealth of Puerto Rico is a governmental entity which has no parent or subsidiary corporations.

Respondent Administration of Cooperative Development is an agency of the Commonwealth and has no parent or subsidiary corporations.

Respondent Cooperative Development Corporation is a public corporation created by law and has no parent or subsidiary corporations.

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I. STATEMENT OF THE CASE

Applying clear law that defines and limits the jurisdiction of the federal courts, the United States Court of Appeals for the First Circuit vacated a decision of the United States District Court for the District of Puerto Rico that had held the Commonwealth of Puerto Rico ("the Commonwealth") liable for a judgment entered in prior proceedings against one of the Commonwealth's public corporations, the Cooperative Development Company ("CDC"), even though the Commonwealth was never designated as a party in the prior litigation. App. 22. In its ruling, the Court of Appeals rejected two theories under which the Petitioner Futura Development of Puerto Rico, Inc. ("Futura") claimed that the District Court had jurisdiction to enter a "veil-piercing" ruling which would have held the Commonwealth liable to Futura as the "alter ego" of CDC, despite the absence of any independent basis for federal jurisdiction over an action by Futura against the Commonwealth.

First, the Court of Appeals applied this Court's recent decision in *Peacock v. Thomas*, 516 U.S. 349 (1996), to determine that the District Court could not entertain Futura's claim against the Commonwealth, which was presented in a separate lawsuit filed long subsequent to the judgment against CDC, under a theory of "enforcement" jurisdiction. App. 6-12. As this Court ruled in *Peacock*, the District Court's enforcement jurisdiction does not extend (in the absence of some other basis for subject matter jurisdiction) to new actions seeking to impose liability on new parties. 516 U.S. at 357. A suit such as Futura's that seeks to impose liability on a new party,

pursuant to a new theory of liability, therefore lies outside the district court's ancillary "enforcement" jurisdiction.

Second, the Court of Appeals ruled that Futura's veil-piercing claim against the Commonwealth did not lie within the "supplemental" jurisdiction of the District Court under 28 U.S.C. § 1367. App. 12-16. Although the District Court possessed jurisdiction to rule on claims by Futura against various Puerto Rico officials based on their actions subsequent to the initial judgment against CDC, Futura's claim against the Commonwealth rested on actions taken prior to the initial judgment. App. 12-13. Because of this difference in timing, the claims against Puerto Rico officials in the subsequent action and those against the Commonwealth itself lacked any "common nucleus of operative fact." App. 14. The Court of Appeals therefore ruled that supplemental jurisdiction did not exist under 28 U.S.C. § 1367.

In the concluding section of its opinion, the Court of Appeals observed that circuit courts are applying this Court's *Peacock* decision "differently," and it stated that this case "might be well served by the Supreme Court's attention." App. 19. Although the intended import of these dicta is unclear, nothing in the First Circuit's opinion suggests that it doubted the clarity of *Peacock's* application to the facts before it. Nor did the First Circuit identify any conflict between its holding and the holding of any other court of appeals or state's highest court. The First Circuit apparently believed that application of the *Peacock* rule resulted in a "perceived injustice[ ]" on the facts of the case, App. 16, due to Futura's inability to enforce its judgment against CDC. But this Court clearly

confronted the concern that some federal judgments might prove unenforceable at the time that it decided *Peacock*. *See* 516 U.S. at 359 (noting that the provisions for enforcement of judgments that are furnished by the Federal Rules of Civil Procedure "cannot guarantee payment of every federal judgment," but affirming that "as long as [the Federal Rules] protect a judgment creditor's ability to execute on a judgment, the district court's authority is adequately preserved, and ancillary jurisdiction is not justified over a new lawsuit to impose liability for a judgment on a third party"). The safeguards contemplated by *Peacock* were available in this case, and the Court of Appeals – as indicated by its holding – did not suggest otherwise.

A. Deficiencies and Omissions in Futura's Statement of Pre-Judgment Background Facts

Futura's chronology of facts and events is deficient and contains a number of misstatements that need supplementation and correction.

1. In 1978, when CDC contracted with Futura's predecessor in interest M.D. Construction Co., Inc., ("M.D. Construction") the Enabling Act creating CDC as a public corporation of the Commonwealth made it very clear that

a) CDC, as a public corporation "shall have juridical personality independently of any officer thereof, the Commonwealth Government, and the other public corporations" and "[i]ts activities shall not pledge the credit of the Commonwealth of Puerto Rico or its political subdivisions." 5 LPRA § 981d(d); and

b) The obligations issued by CDC "shall not be a debt of the Commonwealth of Puerto Rico or other political subdivision" . . . and "neither the Commonwealth of Puerto Rico . . . nor any other political subdivisions shall be liable thereon nor shall such . . . other obligations be payable out of any funds other than those of [CDC]". 5 LPRA § 981o.

It should, therefore, have been evident to all signatories of the 1978 agreements that any potential recovery of an eventual judgment for breach of contract against CDC would have to be satisfied out of CDC's assets.

2. The initial action filed by U.S.I. Properties, Inc. against M.D. Construction and CDC (the "U.S.I. litigation") was premised on diversity of citizenship among opposing parties under 28 U.S.C. § 1332. The Commonwealth of Puerto Rico was never served or designated as a defendant in that primary lawsuit.

3. Although the Attorney General of the Commonwealth contracted the services of a private law firm, Ramírez & Ramírez, to defend CDC and prosecute a crossclaim on its behalf, that legal representation was authorized by statute, 3 LPRA § 103, and did not make the Commonwealth a party to the U.S.I. litigation.

4. Futura states in its Petition that during summation in the initial lawsuit, counsel for CDC intimated that any decision could involve taxpayers' money. Counsel for CDC, however, did not nor could he make an unconditional representation that the Commonwealth would pay any adverse judgment. *See Negrón Gaztambide v. Hernández-Torres*, 145 F.3d 410, 416 (1st Cir. 1998) (Commonwealth officials either directly or through counsel are not

authorized to waive the Commonwealth's immunity from suit or to commit public funds to settle litigation).

B. Misstatements and Omissions in Post-Judgment Background Facts:

1. As Futura states in the Petition, during the post-judgment execution phase, the attorneys for CDC indicated that they would attempt to include the judgment amount in CDC's 1989-1990 budget, but later admitted not having followed up with official authorities. However, there was no firm and categorical representation that the Commonwealth would commit itself to pay any funds or budget any funds on behalf of CDC. Indeed, CDC's counsel lacked the authority to bind the public fisc. *See Negrón Gaztambide v. Hernández-Torres, supra*[1]

2. Futura does *not* state in its Petition that during post-judgment execution supplemental proceedings in the U.S.I. litigation, conducted under Rule 69 of the Federal Rules of Civil Procedure, it sought to establish through deposition testimony of former Commonwealth officers that CDC was the *alter ego* of the Commonwealth. The District Court (Judge José A. Fusté) flatly rejected

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[1] In its Petition, Futura portrays a sinister post-judgment plot by former Commonwealth officials to dismantle CDC. Although the record does not support Futura's assertions, respondents need not address Futura's version of these post-judgment facts given their irrelevance to the lack of enforcement jurisdiction found by the Court of Appeals on the basis of *Peacock* and the absence of any reason for this Court to reconsider *Peacock*.

Futura's claims that CDC was the *alter ego* of the Commonwealth and entered the following order on January 2, 1990:

> "CDC is an entity created by law. We do not see how CDC as a governmental entity could be an *alter ego* of the Commonwealth. Denied". (J.A. VII 2573).

Futura did not appeal or otherwise challenge this Order, which effectively foreclosed any recovery against the Commonwealth.[2]

C. The Present Lawsuit:

1. In 1992 Futura filed the present separate lawsuit in the District Court naming the Commonwealth as a defendant for the first time. In that lawsuit, Futura also alleged civil rights violations by a host of former public officials. App. 3. There was no independent basis for federal jurisdiction of the claims against the Commonwealth. Instead, Futura alleged that the District Court had ancillary enforcement jurisdiction, based on the prior judgment against CDC, and/or supplemental jurisdiction, arising from its jurisdiction of the civil rights claims against the individual officers.

2. Futura's claims against the Commonwealth in the present lawsuit rely on the same alter ego theory of

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[2] Similar orders arising in post-judgment supplemental execution proceedings had been held to be appealable when the order was entered on January 2, 1990. *See, e.g., Fehlhaber v. Fehlhaber,* 664 F.2d 260, 262 (11th Cir. 1981); *United States v. McWhirter,* 376 F.2d 102, 104-105 (5th Cir. 1967).

liability that Judge Fusté had previously foreclosed through his order.[3]

3. In its description of the rulings of the Court of Appeals, the Petition for Certiorari fails to clarify the precise bases for the Court's decision. The Court of Appeals considered, and rejected, two theories under which the District Court might have exercised enforcement or supplemental jurisdiction over Futura's veil-piercing or alter ego claims against the Commonwealth.

First, the Court of Appeals considered the possibility that the District Court might have "enforcement" jurisdiction over Futura's claims, predicated on the judgment rendered in Futura's earlier lawsuit against CDC. App. 6-12. Enforcement jurisdiction, the First Circuit held, would not lie under the standards established by this Court's decision in *Peacock v. Thomas*, 516 U.S. 349 (1996).

Second, the Court of Appeals considered the possibility that the District Court might exercise supplemental jurisdiction over Futura's veil-piercing claim against the Commonwealth, arising out of its jurisdiction over claims against the individual defendants in the 1992 lawsuit, whose post-judgment actions were alleged to have violated Futura's civil rights. App. 12-16. As the Court of Appeals noted, the Petitioner's argument for supplemental jurisdiction was "carefully crafted." App. 13. Among

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[3] Futura, as successor in interest of M.D. Construction, has recently moved to reopen the Rule 69 supplemental proceedings before the District Court in the original *U.S.I.* litigation. It is basically seeking the same relief it sought in the court below through the present separate lawsuit. Futura fails to mention these related ongoing proceedings in its Petition for Certiorari.

other things, the Petitioner did not seek to impose liability on the Commonwealth for its post-judgment actions. In seeking to explain the Petitioner's failure to assert liability on this basis, the Court of Appeals surmised that the Petitioner had framed its action to avoid an anticipated Eleventh Amendment bar; the plaintiffs had not sought relief based on the Commonwealth's post-judgment actions, because those actions were assumed to be protected by the Eleventh Amendment. App. 13. But the Court of Appeals did not hold that the plaintiff's actual claims were barred by the Eleventh Amendment, because it had no occasion to do so. Instead, the Court of Appeals squarely ruled that supplemental jurisdiction did not exist because there was "no common nucleus of operative facts shared by both the civil rights claims and the alter ego claims." App. 14. Indeed the First Circuit stated expressly that it was not deciding the "substantive issues" in the case, including "whether Puerto Rico's Eleventh Amendment sovereign immunity applies to this claim" (i.e., to the claim that the Petitioner had actually asserted). App. 16 n. 6. In sum, the First Circuit's actual holding in rejecting the Petitioner's supplemental jurisdiction theory did not rest on the Eleventh Amendment, but on an application of 28 U.S.C. § 1367 and the settled requirement that supplemental jurisdiction be based on a "common nucleus of operative facts."

II. REASONS FOR DENYING THE PETITION

The Petition for Certiorari asks this Court to grant certiorari to address two issues: whether it should revise or clarify the jurisdictional holding of *Peacock v. Thomas*, 516 U.S. 349 (1996), and whether Puerto Rico is entitled to

Eleventh Amendment immunity. Neither issue merits a grant of certiorari in this case.

Although the Petitioner asserts that *Peacock*'s holding needs clarification, the rule of law established by *Peacock* in fact is clear, and the First Circuit had no difficulty in correctly applying it to this case. The Petitioner does not allege any actual conflict among the courts of appeals or states' highest courts in applying *Peacock*. Nor does the Petitioner squarely assert that the carefully reasoned opinion of the Court of Appeals misapplied *Peacock*. In essence, the Petitioner is asking this Court to reconsider the essential holding of *Peacock*, which was rendered only two Terms ago in a carefully considered opinion joined by eight members of this Court. Petitioner presents no sound reason why this Court should do so.

The question whether Puerto Rico enjoys Eleventh Amendment immunity from suit in federal court may enjoy political prominence, but it is not necessary to the decision of this case. As the Court of Appeals clearly stated, its holding that the District Court lacked supplemental jurisdiction over Futura's claims against Puerto Rico did not depend on a determination that those claims were barred by the Commonwealth's Eleventh Amendment immunity, App. 16 n. 6, since it found "no common nucleus of operative facts shared by both" the claims (against Commonwealth officials) over which the District Court possessed jurisdiction and Futura's purportedly ancillary or supplemental claims against the Commonwealth. App. 14. Although the First Circuit assumed that the Commonwealth enjoyed Eleventh Amendment immunity in at least some contexts, that assumption was therefore not material to its holding that the District Court

lacked supplemental jurisdiction for the quite separate and adequate reason that the requirements of § 1367 jurisdiction were not met. *See* App. 14 ("The claims do not overlap in theory or chronology. The cases are sufficiently distinct to require an independent jurisdictional basis. Any holding to the contrary would be inconsistent with the jurisdictional requirements of section 1332, and thus in direct contravention of section 1367.")

This Court should not reach out to rule on Puerto Rico's Eleventh Amendment immunity on the facts of this case. There is no conflict among the circuits or the states' highest courts on this question, and the First Circuit's position on this issue is fully consistent with the decisions of this Court. If this Court thinks it important to address the question of Puerto Rico's Eleventh Amendment immunity, it should do so in a case that actually turns on that issue.

A. The First Question Involving the Application of *Peacock*

1. In ruling that the District Court lacked ancillary or enforcement jurisdiction in this case, the Court of Appeals correctly applied a recent decision of this Court, *Peacock v. Thomas*, 516 U.S. 349 (1996), in which eight Justices of this Court concurred. In *Peacock*, the plaintiff, Thomas, had obtained a large ERISA class-action judgment against his former employer, Tru-Tech Inc. Tru-Tech failed to pay the judgment; Peacock, an officer and shareholder, paid debts to other, favored creditors, including himself, but ignored the judgment obtained by Thomas.

Thomas thereafter brought a second federal action seeking to enforce the judgment, in which he named both Tru-Tech and Peacock as defendants. This Court – in a considered decision, rendered to solve a conflict among the circuits[4] – held that the federal district court lacked "ancillary" or "enforcement" jurisdiction over the veil-piercing claim against Peacock.

The Court's basis for decision was plain: although ancillary enforcement jurisdiction will lie to enforce judgments against those who are liable for them – for example, through attachment, garnishment, and voidance of fraudulent conveyances – ancillary jurisdiction may not be exercised "in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment." 516 U.S. at 357.

As the opinion of the Court of Appeals meticulously demonstrates, *Peacock's* application to this case is clear. Prior to Futura's filing of the instant action, Puerto Rico was not a party to the U.S.I. litigation and was not liable for any judgment against CDC. As a result, the aim of the instant lawsuit must be to impose a new liability on a person not already liable for the pre-existing judgment. It therefore ran afoul of this Court's ruling in *Peacock*.[5]

2. The Petitioner does not and cannot claim that the First Circuit's decision conflicts with the decision of any

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[4] *See* 516 U.S. at 352 & n. 2.

[5] In the Court of Appeals, Petitioner attempted to distinguish *Peacock*, but its arguments were rejected by the Court of Appeals as wholly unpersuasive. *See* App. at 8-12.

other court of appeals or the highest court of any State.[6] Instead, the Petitioner offers the weaker assertion that *Peacock* has engendered confusion, Pet. at 12, and cites the dicta of the Court of Appeals that *Peacock* was not altogether clear and that the "circuit courts are applying it differently." App. 18-19. According to the Petitioner, confusion results because *Peacock* says first that a federal court has jurisdiction "over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments," 516 U.S. at 356, but then – in a move that the Petitioner regards as confusing or contradictory – holds that the federal courts do not have jurisdiction over a "new lawsuit to impose liability for a judgment on a third party." *Id.* at 359. In fact, there is no contradiction and no reason for confusion. *Peacock* makes plain that ancillary enforcement jurisdiction may involve third parties in a new lawsuit in order to enforce the liability of those already adjudicated to be liable – for example, through attachment, garnishment, and avoidance of fraudulent conveyances – but that *ancillary jurisdiction may not be exercised "in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment."* 516 U.S. at 356-57. Moreover, although the Petitioner claims that there are differences in the way that *Peacock* has been applied, Pet. at 13-14, none of the cases

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[6] The only actual "conflict" cited by the Petitioner is between the holdings of the District Court and the Court of Appeals in this case. Pet. 13. This "conflict" of course dissolved with the Court of Appeals' judgment reversing the decision of the District Court in relevant part.

cited by the Petitioner is inconsistent with *the basic division – between enforcement of old liabilities and establishment of new ones in subsequent lawsuits – that Peacock affirms.*[7]

3. Implicitly acknowledging that there is no conflict or confusion about *Peacock's* application to cases such as this one, the Petitioner argues that this Court should use this case as a vehicle to address an issue that this case does not present: whether uniform standards should be used to determine the permissibility of ancillary jurisdiction in both "supplemental proceedings" under Rule 69 and "new actions" to enforce new theories of liability. Pet. at 15-16. But this Court has already addressed the

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[7] Of the cases cited by Petitioner to illustrate purported uncertainty about how *Peacock* should be interpreted, *Yang v. City of Chicago*, 137 F.3d 522 (7th Cir. 1998), and *Thomas, Head and Greisen Employees Trust v. Buster*, 95 F.3d 1449, 1454 (9th Cir. 1996), *cert. denied*, 117 S. Ct. 1247 (1997), both involved Rule 69 proceedings, not a subsequent lawsuit. So did *Matos v. Richard A. Nellis, Inc.*, 101 F.3d 1193, 1195 (7th Cir. 1996), which the Court of Appeals cited as indicative of uncertainty about when an independent ground of jurisdiction is necessary in order for the corporate veil to be pierced in enforcement proceedings (App. 19). In *Wilson v. City of Chicago*, 120 F.3d 681, 684 (7th Cir. 1997), the court explicitly limited its holding to a case in which "the plaintiff is proceeding in his original action rather than by means of a new suit."

In *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 85 F.3d 1282 (7th Cir. 1996), the court did not even reach the ancillary jurisdiction question because it found the plaintiff to have an independent basis of jurisdiction under the Employee Retirement Income Security Act. And in *Home Corp. v. De Lone*, 1997 WL 214849 (E.D. Pa. 1997), the court *properly exercised ancillary jurisdiction to enforce prior orders and judgments against the original judgment debtors in an interpleader context.*

question presented by "subsequent lawsuits," 516 U.S. at 357, in the *Peacock* case. If this Court believes that it should separately consider the question of the standards applied in Rule 69 supplemental proceedings, it should do so in a case that actually involves Rule 69 supplemental proceedings, as this case of course does not.

4. The Petitioner also relies on the Court of Appeals' enigmatic dictum that this case would be "well-served" by this Court's attention. But the Court of Appeals failed to link this cryptic observation to any of the criteria ordinarily governing grants of certiorari by this Court. The Court of Appeals correctly determined that the case was controlled by a recent, carefully considered decision of this Court in the *Peacock* case; it had no difficulty in correctly applying *Peacock;* it did not identify any decision of a court of appeals or a state's highest court with which its decision conflicted; nor did the Court of Appeals cite any other basis on which certiorari ought to be granted. The Court of Appeals may have disliked the result yielded in this case by the application of a settled rule of law, but dislike for a single outcome presents no adequate reason for this Court to reconsider a clear, recent, and considered holding concerning the outer boundary of federal jurisdiction. Indeed, the Court in *Peacock* expressly contemplated that although the Federal Rules of Civil Procedure provide "fast and effective mechanisms for execution," "[t]he rules cannot guarantee payment of every federal judgment." 516 U.S. at 359. Nonetheless, the Court concluded, the procedural safeguards provided by the Rules (which were available to the Petitioner) "are sufficient to prevent wholesale fraud upon the district courts of the United States," and "as

long as [the Rules] protect a judgment creditor's ability to execute on a judgment, the district court's authority is adequately preserved, and ancillary jurisdiction is not justified over a new lawsuit to impose liability for a judgment on a third party." *Id.* In short, nothing has changed since *Peacock* and there is no need for this Court to reconsider its decision.

B. The Second Question Involving the Eleventh Amendment

1. Although the Petitioner asks this Court to grant certiorari in order to decide whether the Commonwealth of Puerto Rico is protected from suit in federal court by the Eleventh Amendment, no such issue is necessary to the disposition of this case. The question of Puerto Rico's Eleventh Amendment immunity would arise only if supplemental jurisdiction of Petitioner's claims against Puerto Rico would otherwise exist. But the Court of Appeals squarely and correctly ruled that supplemental jurisdiction would not exist, regardless of the existence or scope of Puerto Rico's Eleventh Amendment Immunity, because there was "no common nucleus of operative facts shared by both the civil rights claims and the alter ego claims." App. 14. Supplemental jurisdiction in this case was therefore precluded, not because of any Eleventh Amendment ruling by the Court of Appeals, but because plaintiff failed to satisfy the requirements of supplemental jurisdiction under 28 U.S.C. § 1367. Because ancillary or supplemental jurisdiction would not otherwise exist, as the Court of Appeals correctly ruled, the Eleventh

Amendment question presented in the Petition for Certiorari is unnecessary to the decision of this case.

2. There is no good reason for this Court to grant certiorari to resolve an unnecessary question of Eleventh Amendment immunity at this time. It is true, of course, that the First Circuit has held in other cases that Puerto Rico enjoys the protection of the Eleventh Amendment. *See*, e.g., *Ramírez v. Puerto Rico Fire Service*, 715 F.2d 694, 697 (1st Cir. 1983); *Ezratty v. Commonwealth of Puerto Rico*, 648 F.2d 770, 776 n. 7 (1st Cir. 1981). But the relevant decisions are fully consistent with the decisions of this Court. *See, e.g., Porto Rico v. Rosaly y Castillo*, 227 U.S. 270, 273 (1913) (holding that Puerto Rico is a "government sovereign in its attributes" and therefore should not be deemed suable without its consent); *Richardson v. Fajardo Sugar Co.*, 241 U.S. 44, 47 (1916).

Contrary to Petitioner's suggestion, Pet. at 19, it is by no means anomalous to hold that Puerto Rico is protected under the Eleventh Amendment, even though it is not one of the "States" of the United States for all constitutional purposes. This Court has held repeatedly that the reach of the Eleventh Amendment cannot be defined by the language of the text alone. *See, e.g., Monaco v. Mississipi*, 292 U.S. 313, 322, 325-27 (1934) (holding States immune from suits by foreign countries, even though the Eleventh Amendment does not refer to foreign countries); *Ex parte New York*, 256 U.S. 490, 497-98 (1921) (holding States immune from suits in admiralty, even though the amendment refers only to suits "in law and equity"). *See* also *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 69 (1996) ("[L]engthy analysis of the text of the Eleventh Amendment is directed at a straw man – we long have

recognized that blind reliance upon the text of the Eleventh Amendment is 'to strain the Constitution and the law to a construction never imagined or dreamed of.' "). As the Court recognized in *Monaco v. Mississippi, supra,* 292 U.S. at 322, lying behind the Eleventh Amendment are "postulates" that "limit and control" its application. In applying those "postulates," it is surely relevant that Puerto Rico is a Commonwealth endowed with many of the same attributes of political authority as constitutional States. *Cf. Rodríguez v. Popular Democratic Party,* 457 U.S. 1, 7-8 (1982) ("Puerto Rico, like a state, is an autonomous political entity . . . ").

Finally, the decisions of the First Circuit that extend Eleventh Amendment immunity to Puerto Rico do not conflict with the decisions of any other court of appeals or the highest court of any state, nor does the Petitioner contend otherwise. The Petitioner notes that certain other territories have not been characterized as States for Eleventh Amendment purposes. Pet. at 20. As this Court has recognized, however, "Puerto Rico occupies a relationship to the United States [including the formal status of "Commonwealth"] that has no parallel in our history." *Examining Board of Engineers, Architects and Surveyors v. Flores de Otero,* 426 U.S. 572, 596-97 (1976). No "conflict" therefore results when Puerto Rico is treated as a State for some purposes of federal law, even if other territories are classified differently.

3. Petitioner suggests that the question of Puerto Rico's Eleventh Amendment immunity is an important one, which this Court should address explicitly. But as evidence of the urgency of the question, the Petitioner cites nothing but a political controversy about whether

Puerto Rico should seek or be granted formal admission to statehood. Pet. at 17. Surely this Court would not grant certiorari for purposes of influencing a political debate, when resolution of the controverted issue was unnecessary to the resolution of a justiciable case. If this Court wishes to address Puerto Rico's status under the Eleventh Amendment, it should do so in a case where resolution of that issue is necessary to the disposition of the case and has been addressed by the lower court.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted.

San Juan, Puerto Rico, this 3rd day of September, 1998.

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